

Singh (Migration) [2018] AATA 3703 (3 July 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Sher Singh
CASE NUMBER:	1714453
DIBP REFERENCE(S):	BCC2014/1311503
MEMBER:	David Barker
DATE:	3 July 2018
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 03 July 2018 at 8:13am

CATCHWORDS

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary)) – Whether a genuine spousal relationship exists – Witness credibility – False information knowingly provided to Commonwealth agencies – Inconsistencies in oral evidence provided – Lack of objective documentary evidence provided – Credibility concerns not outweighed by available support evidence – Decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A(3), Schedule 2, cl 820.211(2)(a), 820.221, Schedule 3

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. ISSUE

2. The issue in the present case is whether the applicant was, at the time of application and at the time of this decision, in a genuine and continuing relationship with the sponsor.
3. The applicant has asked the Tribunal to review a decision of a delegate of the Minister for Immigration, made on 26 June 2017, to refuse to grant him a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act). The applicant applied for the visa on 27 May 2014 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211 and cl.820.221 because they were not satisfied the applicant was the spouse or de facto partner of the sponsor.
5. The applicant appeared before the Tribunal on 9 May 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.
6. The applicant was represented in relation to the review by his registered migration agent.
7. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

8. BACKGROUND

9. The applicant is a national of India and is 27 years old.
10. The sponsor was born in Freetown, Sierra Leone on 3 June 1980 and is currently 36 years old. She first arrived in Australia on 2 December 2004 on a Global Special Humanitarian (Subclass 202) visa. She was granted Australian citizenship on 1 May 2007. The sponsor has a [child] born in [a particular year].
11. The applicant first travelled to Australia on 30 November 2009 on a Student (Subclass 572) visa, which ceased on 8 August 2012.
12. On his visa application form the applicant stated he met the sponsor at Bankstown Centro Shopping Centre, Bankstown, NSW on 3 June 2013. The parties were married in Greenacre, NSW on 4 April 2014.
13. The delegate's decision record, a copy of which was provided to the Tribunal by the applicant, notes [information removed].
14. The Department of Immigration (the Department) initially refused the application for a Provisional Partner visa in May 2015 on the basis that the applicant did not satisfy

cl.820.211(2)(d) because he did not meet the Schedule 3 criteria and there were no compelling reasons to not apply those criteria.

15. On 16 December 2015, the Tribunal (differently constituted) affirmed the decision on the basis that there were no compelling reasons at the time of the visa application to not apply the Schedule 3 criteria. The applicant subsequently appealed to the Federal Circuit Court.
16. In light of the Waensila decision, on 22 April 2016, the Federal Circuit Court remitted the matter for reconsideration.
17. On 23 November 2016, the Tribunal (similarly constituted) remitted the application for a Partner (Temporary) (Class UK) Subclass 820 visa on the basis that there were compelling reasons to not apply the Schedule 3 criteria.
18. The delegate considered there were significant concerns as to the reliability of the parties' evidence. After considering the available evidence, the delegate found there was insufficient credible evidence to demonstrate that at the time of application, in May 2014 and at the time of the delegate's decision in June 2017 that the parties had a mutual commitment to a shared life, a genuine and continuing relationship and that they lived together, or not separately and apart, on a permanent basis.

CONSIDERATION OF CLAIMS AND EVIDENCE

19. In this matter the delegate, who reconsidered the application for a Provisional Partner visa, in light of the Tribunal's previous determination there were compelling reasons to not apply the Schedule three criteria that were otherwise applicable to the applicant's visa application, found both the applicant and sponsor to not be credible witnesses. As a consequence of this finding, I provided the applicant and sponsor with the opportunity to comment on the concerns raised by the delegate in their decision record.
20. In relation to the delegate's finding that neither the applicant or sponsor were not credible sources of information, the applicant said he did not have anything to say about that particular finding but that he believes the delegate's decision was totally wrong. He said he was prepared to answer any question about the relationship between him and his partner. When asked if she would like to comment on this general finding by the delegate that her evidence lacked credibility, the sponsor gave evidence she is stressed and has papers from her doctor which says she has high blood pressure. She said her son is close to the applicant and that her son gets upset when she tells him the applicant may have to leave Australia.
21. The Tribunal invited the applicant to comment on inconsistencies in the evidence the parties gave to the Department and the Tribunal previously regarding the circumstances of the sponsor's pregnancy in 2016. The parties told the Tribunal a compelling reason the applicant could not depart from Australia to apply for a partner visa from an offshore location was the need for him to look after the sponsor during her pregnancy and to assist her and the baby after the birth, whereas, the applicant subsequently gave the Department a statutory declaration from the sponsor in which she declared she terminated the pregnancy because she was stressed about the applicant's immigration situation and because she and the applicant decided they would not be able to look after two children. The Tribunal noted the applicant had provided the Department a medical report indicating the sponsor terminated her pregnancy in early December 2016, only a few weeks after the Tribunal made a decision in November 2016 to not agree with the Department's decision to refuse the onshore application and had remitted the applicant's visa application back to the Department for their further consideration. Given the apparent significant inconsistency in relation to information provided by the parties about the circumstances of the sponsor's pregnancy in 2016, the

Tribunal invited the applicant to comment as to whether he and the applicant are reliable or credible witnesses. In response to this information the applicant said he believed the sponsor was pregnant in 2016 and that they have explained the reasons she terminated her pregnancy in December 2016 in the statutory declaration that was provided to the Department. He said the reason was financial stress and that their financial situation is still not good because of costs associated with his visa application going back and forth between the Department and the Tribunal and the Federal Circuit Court.

22. The Tribunal invited the applicant to comment on concerns arising from the sponsor's marital status enlisted as separated with Centrelink since August 2015. In response to this invitation the applicant told the Tribunal he knows the sponsor's marital status was listed with Centrelink as separated despite there being together. He claimed neither he nor the sponsor were aware they were required to inform Centrelink of her changed relationship status. He said they also did not tell Centrelink because of the financial difficulties they are experiencing and because they needed the extra money the sponsor received at her single rate of payment. He said when things are sorted out and if he gets a visa they are prepared to repay Centrelink any overpayment debt the sponsor may have developed.
23. The Tribunal put to the applicant that it is apparent from his oral evidence that the decision to not notify Centrelink of any change in the parties' relationship status was made knowingly and in response to this the applicant said the money was never for him. The Tribunal put to the applicant that the sponsor knowingly misrepresenting her relationship status to a Commonwealth agency such as Centrelink gives rise to a concern that her evidence during the hearing may be unreliable and in response the applicant said that later on they declared their correct status of the relationship to Centrelink. The Tribunal then noted the copy of correspondence Centrelink sent to the sponsor in April 2018, which the applicant provided with the review application, indicates that she is in receipt of 'Parenting Payment Single', which is a payment paid at the single not partner rate. In response to this the applicant really reiterated his claim that Centrelink have been told about their relationship.
24. The Tribunal invited the applicant to comment on the lack of alignment between residential address information the sponsor has provided to Centrelink and information he has provided to the Department in relation to his residential address history. In response to this invitation the applicant gave evidence he is an Uber driver and that he has met so many different people who lived together, some of whom are not legally married some of whom are. He said some of the people he has met have children, some do not. He said these differences do not mean two people are not a genuine couple. He said just because the sponsor did not inform Centrelink about her marital status and did not give them the same residential address details, this should not be the reason for the Department refusing him a visa. The applicant said he does not know why the Department has mixed up his visa application case with the sponsor's Centrelink records.
25. The Tribunal invited the applicant to comment on the delegate's concern about the reported unwillingness of his sponsor to tell him what information she had provided Centrelink about her relationship status, or to seek access to her Centrelink record so as to support his visa application. The Tribunal noted this appeared to be an unusual choice for a person who claimed to be in a genuine and continuing relationship with the applicant. In response to this invitation the applicant really reiterated that he had already mentioned that he was aware the sponsor had not told Centrelink about her relationship status but that he was unaware of how significant the issue would be in relation to his visa application, he acknowledged that he said she did not give him the information because of privacy and that he did not want to push the sponsor and he did not want to stop her from receiving the payments she was getting because of the financial difficulties they were both experiencing.

26. The Tribunal invited the sponsor to comment on issues arising from her not changing her relationship status with Centrelink from 'separated' to 'partnered'. In response to this invitation the sponsor said the applicant pays the rent for their home in Belmore and she pays for groceries and for her son's private school fees. She said she filled out a form from Centrelink last week and in that form declared her relationship status as 'partnered'. She said she did not assist her husband with his response to the letter from the Department inviting him to comment about information from her Centrelink records, by giving him access to information from her Centrelink records, because of the financial difficulties she was experiencing and her concern as to how helping the applicant in this way would affect her rate of payments. She said she and the applicant were living together but she did not change her residential address details with Centrelink. She said she was getting paid because she had financial problems and that was why she wanted to receive those payments. She said they can pay back any money that she owes Centrelink.
27. The Tribunal has carefully considered the oral evidence provided by the applicant and sponsor in response to the issues that contributed to the delegate making a finding that neither of the parties were credible witnesses. The Tribunal is not satisfied the evidence provided by the parties has resolved the credibility concerns raised by the delegate.
28. Whilst there were minor inconsistencies in the applicant's evidence about the sponsor's reporting of her relationship status to Centrelink, it is apparent from his evidence that until as recently as April 2018 the sponsor had not told Centrelink she was partnered to the applicant. Taken at face value, the applicant's oral evidence during the hearing, which was consistent with that provided by the sponsor, indicates the sponsor knowingly misrepresented her personal circumstances to a Commonwealth agency, namely Centrelink and that the applicant was aware she was so doing. It is apparent that both the sponsor and applicant were aware that maintaining her relationship status as 'separated' would result in the sponsor receiving a higher rate of income support payments from Centrelink than she would otherwise be entitled to and that the applicant only became concerned about this situation when he became aware it may impact on his own entitlement to a visa providing him permanent residency in Australia. The Tribunal is concerned the parties' actions in relation to this Centrelink issue indicates that they are both willing and comfortable with misrepresenting their circumstances when they perceive they may benefit financially or otherwise through doing so. The Tribunal is satisfied this gives rise to concern as to their reliability as witnesses.
29. As to the inconsistency and apparent contradictory nature of information provided by the parties to the Department and to the Tribunal previously, in relation to the sponsor's 2016 pregnancy, the Tribunal acknowledges there is nothing intrinsically untoward about a woman making a choice as to whether to proceed with a pregnancy. The Tribunal acknowledges that this is a difficult choice for a woman to make and that she will arrive at a choice through considering a range of factors. However it is of some concern to the Tribunal that it appears the sponsor arrived at the choice to terminate her pregnancy only a few weeks after a decision had been made in relation to the applicant's visa application, which held out the possibility he would be able to remain in Australia whilst his partner visa application was processed, thereby providing her with the support during the pregnancy and after the birth, as they have both previously indicated was a very high priority for them. The Tribunal is concerned the inconsistent stated priorities with respect to the pregnancy, which is apparent in the information provided to the Department and the Tribunal previously, gives rise to concern about the reliability of evidence provided by the parties. However, in making this finding the Tribunal has placed less weight on this concern than it has upon the aforementioned concerns regarding their explanation for information the sponsor had provided to Centrelink about her relationship status and residential address history.

30. Upon considering the concerns raised by the delegate and the parties' response to these concerns, the Tribunal has sufficient concern as to the reliability of the oral evidence provided by the applicant and sponsor to not place significant weight upon it where it is not supported by objective documentary evidence.

Whether the parties are in a spouse or de facto relationship

31. Paragraph 820.211(2)(a) and cl.820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
32. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

Are the parties validly married?

33. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship.
34. The Tribunal has reviewed a marriage certificate issued by NSW Births Deaths and Marriages which states the parties were married in Greenacre, NSW in June 2014.
35. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

36. The financial aspects of the relationship

37. The Tribunal noted there was a relative lack of evidence regarding the basis upon which the applicant and sponsor shared regular living expenses around the time he applied for the partner visa in May 2014. In response to this comment the applicant said the sponsor was pregnant in 2016 but they had to terminate the pregnancy. He said he has not lied and he does not know what other evidence he can provide to prove the genuine nature of their relationship. He said they have been together for five years and that her accompanying him to the hearing is further evidence their relationship is genuine.

38. Are there any joint ownership of real estate or other major assets?

39. The applicant gave evidence the parties have no joint ownership of real estate or other major assets. He said there are two cars, but that they are not in joint names.

40. Are there any joint liabilities?

41. The applicant gave evidence the parties have no joint liabilities.

42. *As to the extent of any pooling of financial resources, especially in relation to major financial commitments?*

43. There is no documentary evidence to support a contention the parties were at the time of application or at the time of this decision pooling their finances in relation to major or minor financial commitments.

44. *As to whether one person in the relationship owes any legal obligation in respect of the other?*

45. The applicant gave evidence the parties have no legal obligations in respect of each other.

46. *As to the basis of any sharing of day-to-day household expenses*

47. The applicant said he and the applicant share regular expenses like everyone normally does. He said he pays the rent for property leased in Belmore, NSW and for the electricity supplied to this rental property. He said the sponsor pays for groceries and other little household expenses. He said the parties sometimes give each other cash when either of them has a need for extra financial support. The sponsor also claimed she paid for groceries used by the parties and her son. She said she is also responsible for paying her son's private school fees.

48. The applicant gave evidence he and the sponsor shared the cost of the rental bond for the property for where they live in Belmore, but that they paid in cash from their savings and he has no records to show they shared this expense. He initially claimed the rent payments were also a shared expense, sometimes paid in cash and sometimes by a bank card. However, at a further point in the hearing the applicant said he alone pays the rent. The applicant made no comment when the Tribunal raised the concern that this claim could not be corroborated as he had not provided the Tribunal with any recent account statements from this or any other bank account held by the parties separately or jointly with his review application.

49. *Assessment of the financial aspects of the parties' relationship*

50. There is little objective documentary evidence which indicates the financial aspects of the parties' relationship was at the time of application, or at the time of this decision indicative of two people who have a mutual commitment to a shared life together. They have no shared assets, joint liabilities or financial obligations to each other. There is no objective documentary evidence in the form of bank account statements or other financial records to support the contention they pool their finances to any significant extent with respect to either major or minor financial commitments. The evidence as to the basis upon which they share day-to-day living expenses is not persuasive. Whilst their names are both on a rental tenancy lease, there is no documentary evidence to support the applicant's claims as to whether the bond payment, rent and utility costs for this property are a shared expense. The Tribunal finds the financial aspects of the parties' relationship do not support the contention they are in a genuine and continuing relationship.

51. **The nature of the household**

52. The Tribunal noted there was a relative lack of evidence regarding the nature of the parties' household around the time he applied for the visa in May 2014. In response to this comment the applicant said he gave the Department a copy of the rental lease where he and the sponsor were at that time living. The Tribunal accepts this claim but is not satisfied a rental lease in and of itself establishes two people have established a shared household together

in a manner which is indicative of two people in a genuine and ongoing relationship with each other.

53. *Is there any joint responsibility for the care and support of children?*

54. The applicant said the sponsor drives her son to and from school. He said both he and the sponsor work and that they share their evenings together at home as a family. He made no claims as to any other substantive involvement in the care of the sponsor's child, but has claimed he has love and emotional attachment for the applicant's son. He declares any separation would have a devastating impact on the child. The Tribunal has not found this claim convincing and notes there is no credible documentary evidence of any note to support this claim. There is no indication the applicant has had involvement in educational, sporting or other social activities with the applicant's child, with the exception of a few photos apparently taken in a shopping centre, which show a rather uncomfortable looking child in the company of the applicant.

55. *As to the living arrangements of the persons?*

56. The applicant gave evidence he, the sponsor and her son occupy one bedroom in the two-bedroom rental property in Belmore and that the other bedroom is occupied by one of his friends. The sponsor said she is currently staying with her aunt in Bankstown and has been at that location for the month preceding the hearing. She said she is staying there because her stress calms down when she is together with her relatives and that this makes her feel she has a family. She said her son stays at her aunt's home and sometimes also stays with her and the applicant if she is staying at the home in Belmore she shares with the applicant and his friend. The applicant agreed that the sponsor and her child are not currently staying at the Belmore property. He then said that he wished to make no further comments in response to the sponsor's oral evidence about their current household arrangements.

57. *As to any sharing of the responsibility for housework?*

58. The applicant said the sponsor does most of the cleaning in their rental property at Belmore.

59. *Assessment of the nature of the parties' household arrangements*

60. There is little objective documentary evidence which indicates the nature of the parties' household arrangements were at the time of application or are at the time of this decision indicative of two people who have a mutual commitment to a shared life together. The Tribunal does not accept the applicant's contention that the provision of a rental tenancy lease is sufficient to demonstrate the genuine nature of the parties' relationship. The applicant does not claim to have more than superficial involvement in the care of the sponsor's child and the parties do not have a child from their union for which they have shared parental responsibility. The applicant's claims regarding responsibility for house work is not persuasive and if it was to be taken at face value is indicative that this does not appear to be shared responsibility. The Tribunal finds the nature of the parties' household arrangements do not support the contention they are in a genuine and continuing relationship.

61. **The social aspects of the relationship**

62. *As to whether the persons represent themselves to other people as being in a de facto relationship with each other?*

63. The applicant said he and the sponsor represent themselves to other people as being in a married relationship with each other. The Tribunal has placed some weight on the rental

tenancy lease which both the parties have signed. However, the Tribunal has placed only limited weight on this evidence, as people placing their names on a rental tenancy lease does not in and of itself demonstrate the nature of the relationship they have with each other. The Tribunal accepts the parties registered their marriage with NSW Births Deaths and Marriages and has placed some weight on this evidence. The Tribunal accepts the applicant informed the Australian and Indian authorities of the parties' marital status at the time he applied for a new passport and whilst placing some weight on this evidence, the Tribunal notes there is no evidence that the respective nations authorities undertook any assessment of the genuineness of the parties' relationship.

64. *As to the opinion of the persons' friends and acquaintances about the nature of the relationship?*

65. The applicant gave evidence he has provided the Tribunal with a witness support declaration from the person who is sharing the Belmore rental accommodation with the parties. He said they do not have contact with their neighbours but he does not consider this unusual in apartment living.
66. The Tribunal noted that the applicant had provided no witness support declarations or other support statements from members of his family. In response to this comment the applicant said he does not have contact with his family and that it is seven years since he saw them. He said the sponsor's parents are deceased but that she has an aunt who she sometimes visits and he has friends who he sometimes visits.

67. *As to any basis on which the persons plan and undertake joint social activities?*

68. The Tribunal noted there was a relative lack of evidence regarding the social aspects of the parties' relationship around the time he applied for the visa in May 2014. In response to this comment the applicant said he and the sponsor did not go out much together back then and that is why he did not have much evidence of them sharing social activities together. He said they usually stayed at home. He said they have always had plans to travel together, but have not done so because of his visa difficulties.
69. As to their more recent circumstances, the applicant gave evidence he and the sponsor do not arrange any social gatherings or parties together as at this stage they have nothing in mind that would warrant making such arrangements. He said they may in the future plan social gatherings if they have children together or if his visa is approved, as this would be something he would like to invite his friends to celebrate with him.
70. The applicant said he and the sponsor would like to have long holidays together but because of his visa situation and their financial situation they have not been on any holidays together.
71. The sponsor gave evidence she and the applicant do not go out together because of their financial problems and because of the stress they are under. She said the applicant sometimes asks her to go out with him, but that she says no because she is stressed. She said they were unable to go on a honeymoon because of financial problems and stress. The sponsor said if she is unhappy she does not do anything.
72. The Tribunal has reviewed the photographs provided with the review application, which show the parties together and of the applicant and the sponsor's child. The Tribunal has a concern the photographs seem to have been taken in a very restricted range of circumstances and notes they do not show the parties in social situations with other people. The Tribunal has placed no weight on these photographs as an indication of how the parties represent themselves to other people or the general community. The Tribunal is also not

satisfied these photographs demonstrate any significant involvement the applicant has in the care of the applicant's son, or that the parties plan or undertake any joint social activities.

73. *Assessment of the social aspects of the parties' relationship.*

74. With the exception of the marriage certificate, information provided when applying for a new passport and rental tenancy lease documents there is little objective documentary evidence which would indicate the social aspects of the parties' relationship resembles those of two people with a mutual commitment to a shared life together. Due to the general concerns with regard to the reliability of the applicant's evidence and his demonstrated propensity to misrepresent his circumstances when he considers this advantageous to him, the Tribunal has concern the aforementioned documents were sourced so as to support his visa application rather than for other genuine reasons. On his own evidence the applicant said the parties rarely plan and undertake joint social activities or take holidays as a family unit. There is no evidence that the parties extended family systems support their relationship at the present time, or that they have contact with neighbours who can attest to the genuine nature of their relationship. The Tribunal notes the sole witness support declaration is from the person sharing accommodation in the Belmore property and whilst the Tribunal has placed some weight on this evidence it does not outweigh concerns as to other circumstances where the parties have not represented themselves as people who are in a spousal relationship with each other.
75. It is of concern that a letter to the sponsor from Centrelink, dated 30 April 2018, which was provided with the review application, indicated Centrelink were seeking clarification of her relationship status as their records show she was continuing to receive Parenting Payment Single. This is a payment paid to a person who is not partnered to another person and is an indication that as at that date had not informed Centrelink that she was in a relationship with the applicant. The Tribunal is satisfied that the applicant has known about this issue since at least June 2017. The Tribunal does not accept the applicant's contention the nature of the information provided by the sponsor to Centrelink regarding her relationship status and her residential address details is not relevant to his visa application, as it is a clear example of how the sponsor was representing herself and her living circumstances to a major Commonwealth agency.
76. After considering the available evidence and the applicant's submission in relation to this evidence, the Tribunal finds the social aspects do not support the contention the applicant and sponsor are in a genuine and continuing relationship.

77. **The nature of the persons' commitment to each other**

78. The Tribunal has reviewed the applicant's statutory declaration, dated 8 May 2018, which was provided with the review application. In this document the applicant declared he is married to the sponsor in accordance with requirements of the Act and that they have been together for approximately five years. He refers to providing updated bank statements to the Tribunal, however no such recent financial records were provided with his review application.

79. *As to the duration of the relationship?*

80. The Tribunal accepts the parties have been married since April 2014. The Tribunal has considered the claimed five year duration of the relationship but has placed no significant weight on this as the cumulative evidence does not in my view demonstrate that the applicant and sponsor are in a genuine and continuing relationship.

81. *As to the length of time during which the persons have lived together*

82. The Tribunal accepts both the applicant and sponsor have taken out rental tenancy leases together in the period since 2014. The Tribunal notes the applicant's confirmation that the sponsor is not at present staying with him in the Belmore rental property. The Tribunal does not view this as a determinative issue in and of itself, as the relevant test in the Act is whether the parties' live together, or not separately and apart on a permanent basis. However, there is a lack of overall credible evidence demonstrating the parties have at any stage established a shared household together and for this reason the Tribunal has not placed weight on the claimed period of time the parties have lived together.

83. *As to the degree of companionship and emotional support that the persons draw from each other?*

84. The applicant gave evidence he and the sponsor support each other emotionally. He said the sponsor is depressed because of his immigration difficulties and he has supported her regarding this and in the period following the termination of her pregnancy. He said that she also emotionally supports him and that they support each other in relation to their financial pressures. He said he is under a lot of stress but that he doesn't want to add to the sponsor's stress by telling her about how stressed he feels because their life is on hold until after his visa situation is worked out. The Tribunal did not find the applicant's oral submissions or declarations he has elsewhere made with respect to this issue convincing. In relation to emotionally supporting the sponsor following the termination of her pregnancy, the Tribunal has placed limited weight on this claim because of the concern it has for the reliability of the applicant's evidence in relation to this issue.

85. *As to whether the persons' see the relationship as a long-term one?*

86. The Tribunal notes the parties gave consistent evidence during the hearing that they see their relationship as long-term. However, I consider the applicant's evidence with regard to this and related issues to be unreliable as the Tribunal is not satisfied the applicant and sponsor are in a genuine and continuing relationship.

87. *Overall assessment of the parties' relationship*

88. The Tribunal is not satisfied the evidence establishes the parties had a mutual commitment to a shared life as husband and wife to the exclusion of others, or that they were, at the time of application or at the time of this decision in a genuine and continuing relationship and that they did not live separately and apart. This is because, when considering the different aspects of the parties' relationship around the time of application and at the time of this decision, the Tribunal is not satisfied the parties have to any significant degree shared regular expenses, pooling their finances or that they had any shared assets, debts or legal obligations to each other. There is limited evidence the parties have resided together, or that they had established a household together. There is little credible evidence members of the parties' families and friends support the contention their relationship has at any time been genuine, there is little evidence the parties plan or undertake social activities together, or that they emotional support each other or have shared responsibility for the care of children. On the other hand, there is clear evidence the sponsor has represented herself to a major Commonwealth agency as not partnered to the applicant or any other person and that the applicant has known this to be the case. The limited credible evidence that the applicant's flat mate attests to the genuineness of the parties' relationship and the existence of rental tenancy leases in the parties' names do not outweigh the very considerable concerns regarding the reliability of the parties' evidence and the indicators that they are not in a genuine relationship.

89. Given these findings, the Tribunal is not satisfied that at the time the visa application was made, or at the time of this decision, the parties had a mutual commitment to shared life to the exclusion of others, or genuine and continuing relationship, or that they live together or not separately and apart on a permanent basis.
90. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made or at the time of this decision.
91. Therefore, the applicant does not meet cl.820.211(2)(a) and cl.820.221. There is no evidence to indicate the applicant meets the alternative criteria contained in cl.820.211 or cl.820.221(3).
92. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

93. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

David Barker
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).